



Connecticut Department of

ENERGY &
ENVIRONMENTAL

Amendments to Regulations Regarding the State Board of Examiners of Environmental Professionals

Hearing Officer's Report

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March 6, 2012

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I. Hearing Officer's Report Content

On October 12, 2010, the Commissioner of the Department of Environmental Protection (DEP) published a notice of intent to amend various sections of the Regulations of Connecticut State Agencies (RCSA), including sections 22a-133v-2 through 5 inclusive, various subsections of section 22a-133v-7, and the addition of a new subsection 22a-133v-4(e). Pursuant to such notice, a public hearing was held on November 18, 2010, with the public comment period closing on the same day. *[Note: the process was initiated by the Department of Environmental Protection which has subsequently been reorganized and renamed the Department of Energy and Environmental Protection (CT DEEP). For the remainder of this report all references to the former DEP are replaced with and referred to as CT DEEP]*

As required by RCSA section 4-168(d) of the Connecticut General Statutes (CGS), this Hearing Officer's Report for the Proposed Amendments to the Regulations concerning the State Board of Examiners of Environmental Professionals is the culmination of the public process that the Connecticut Department of Energy and Environmental Protection (CT DEEP) undertook to revise and update the relevant regulations consistent with several recent statutory changes. The purpose of the Hearing Officer's Report is to provide recommendations to the Commissioner of the Department of Energy and Environmental Protection for the final revisions to the Regulations of Connecticut State Agencies (RCSA) sections 22a-133v-2 through 5 inclusive, various subsections of section 22a-133v-7, and the addition of a new subsection 22a-133v-4(e). In support of the Commissioner's review, this document provides background information on the State Board of Examiners of Environmental Professionals (more commonly known as the LEP Board), the statutory underpinnings and the regulatory changes proposed, the state processes for proposing revisions to the regulations, as well as summarizes and responds to public comments received. A final recommended version of the amendment text is also provided.

The Hearing Officer's Report is intended to be a fair representation of revisions and updates to the LEP Board Regulations as the result of the public review and hearing process, but in the case of any errors or omissions, the official RCSA as approved by Regulations Review Committee of the Connecticut State Legislature and as published in the Connecticut Law Journal govern. (Appendix C of this report.)

II. State Board of Examiners of Environmental Professionals

The State Board of Examiners of Environmental Professionals (“LEP Board”) administers the provisions of the LEP Program¹ concerning licensure and issuance; reissuance; suspension or revocation of licenses; and sanctions and other disciplinary actions. Pursuant to Section 22a-133v(b) of the Connecticut General Statutes (CGS), the State Board of Examiners of Environmental Professionals was established within CT DEEP. The Chairman of the LEP Board is a designee of the Commissioner of CT DEEP. Ten (10) other members are appointed by the Governor and shall consist of six (6) LEPs; two (2) active members of an organization that promotes protection of the environment; and one member each from organizations representing business and lending institutions.

CGS section 22a-133v(c) authorized the Commissioner, with advice and assistance from the LEP Board, to adopt regulations concerning the professional ethics and conduct appropriate to establish and maintain a high standard of integrity and dignity in the practice of an LEP. The LEP Regulations were adopted on June 2, 1997.

III. Administrative Requirements

The Uniform Administrative Procedure Act codified in the General Statutes of Connecticut (CGS) as Chapter 54 (Sections 4-166 et. seq.), establishes procedures that state agencies must follow when performing listed administrative functions. One of the administrative functions that a state agency (like CT DEEP) performs is the development of regulations that are codified into the Regulations of Connecticut State Agencies (RCSA). The Connecticut UAPA sets out the procedures that state agencies must follow to adopt regulations. In Connecticut, a standing committee of the General Assembly (Regulations Review Committee) must ultimately approve a regulation before it becomes law. Regulations are given the same weight as statutes once the regulations have been properly enacted.

¹ The Licensed Environmental Professional (LEP) Program was established by Public Act 95-183, and codified as section 22a-133v of the Connecticut General Statutes (CGS) on October 1, 1995.

In addition to defining the term regulation, Chapter 54 of the CGS requires that each state agency "adopt as a regulation Rules of Practice". CT DEEP adopted Rules of Practice that are codified in RCSA Sections 22a-3a-2 through 22a-3a-6. RCSA Section 22-3a-3 entitled Regulation-making describes the procedures the Department must follow. These regulations must be read in conjunction with [CGS Section 4-167 through 4-174](#).

IV. Summary of Proposed Amendments to the LEP Board Regulations

The Connecticut Department of Energy and Environmental Protection (CT DEEP) proposed various amendments to the regulations regarding the State Board of Examiners of Environmental Professionals in response to Public Acts 03-6, 06-76, 07-81 and 09-3. In addition, several technical revisions were also proposed. Specifically, amendments are proposed to sections 22a-133v-2 through 5 inclusive, and subsections 22a-133v-7(c), (l), (n), (o), (r), (s), (ee) of the Regulations of Connecticut State Agencies ("RCSA") and to adopt new subsection 22a-133v-4(e) of the RCSA.

The regulations are being amended consistent with several recent statutory changes. The major revision incorporates statutory changes pursuant to Public Act 07-81 which allows the State Board of Examiners of Environmental Professionals (LEP Board) the flexibility within the disciplinary process to levy sanctions other than revocation, denial or suspension of a license. This gives the LEP Board the discretion to impose remedial types of discipline.

Highlights of the proposed revisions to the regulations regarding the LEP Board include:

- Increasing flexibility within the disciplinary process to levy sanctions other than revocation, denial or suspension of a license.
- Giving the LEP Board the flexibility to consider all undergraduate, graduate and postgraduate course work for the purposes of determining eligibility to take the LEP exam.
- Allowing the periodic retaking of a course or seminar to count toward continuing education credits.
- Reducing the number of consecutive hours of instruction required for a course to meet continuing education requirements.
- Clarifying that anyone participating in developing the LEP exam is ineligible to take the exam for a 2 year period.

- Establishing procedures allowing an environmental professional to renew an expired license within six months of expiration.
- Clarifying that a LEP cannot verify property that the licensee or licensee's employer has a financial interest in, other than professional services fees. The regulatory revisions also clarify when a LEP's seal may be used.
- Revising fees to reflect legislative increases.

The proposal contains the following regulatory amendments:

Section 22a-133v-2

Amendment to subsection 22a-133v-2(b) is proposed to allow the board of examiners the flexibility to consider all graduate and postgraduate coursework taken by an applicant for the purpose of determining whether an applicant's education, combined with a bachelor's or advanced degree is fundamentally equivalent to those degrees listed in section 22a-133v-2(b)(2)(A) of the regulations. The regulatory revisions are intended to reflect statutory changes enacted under Public Act 06-76. In addition, amendments to subsection 22a-133v-2(e) are intended to: 1) clarify that continuing education credits cannot fulfill the requirements of two biennial periods; 2) allow continuing education credits taken during one biennial period to be applied to the previous biennial period when such credits are required by the Board; 3) allow greater flexibility in the number of classroom hours required for short courses; and 4) allow for the periodic retaking of a course or seminar to count toward the fulfillment of continuing education requirements.

Section 22a-133v-3

The purpose of this amendment is to clarify that the fee payment for the examination was increased pursuant to Public Acts 03-6 and 09-3 and is now \$235.00. This amendment also deletes regulatory language that is no longer relevant related to interim environmental professional status and eligibility to take the first or second exam. It also clarifies that anyone participating in developing the exam is ineligible to take the exam for a 2 year period, thereby eliminating any potential ethical conflicts. Currently, there are adequate numbers of LEPs available to assist as technical advisors in developing the examination.

Section 22a-133v-4

The purpose of this amendment is to clarify that the fee payment for renewals was increased pursuant to Public Acts 03-6 and 09-3 and is now \$425.00. The regulatory revisions are also

intended to reflect statutory changes pursuant to Public Act 07-81. Public Act 07-81 amended Section 22a-133v of the Connecticut General Statutes regarding Licensed Environmental Professionals (LEP) and authorizes the LEP Board to levy sanctions other than revocation, denial or suspension of an environmental professional's license. This change gives the LEP Board additional disciplinary tools and discretion to impose remedial types of discipline.

(NEW) Subsection 22a-133v-4(e)

Public Act 06-76 amended Section 22a-133v(f) of the Connecticut General Statutes to address situations where a LEP license has expired and allows the LEP Board the flexibility to reissue a new license without requiring the individual to retake and pass the examination again, provided a license renewal is submitted within six months after the expiration of the license. The regulatory revisions reflect those statutory changes and establish procedures and criteria for license reinstatement after expiration.

Subsection 22a-133v-5(b)

The purpose of this amendment is to clarify that a LEP cannot verify property that the licensee or licensee's employer has a financial interest in, other than professional services fees and clarifies when a licensee may use their seal.

Subsections (c), (l), (n), (o), (r), (s) and (ee) of Section 22a-133v-7

The current regulations only allow for the revocation, denial or suspension of a license. The purpose of this amendment is to incorporate statutory changes pursuant to Public Act 07-81, which gives the LEP Board additional disciplinary tools and the discretion to impose remedial types of discipline.

V. Specific Comments and Response thereto on the Proposed Revisions

No comments opposed CT DEEP's intent to seek final adoption of this proposal. One written set of comments were received (dated November 18, 2010) from the Environmental Professionals' Organization of Connecticut (EPOC). The specific comments are summarized and may be paraphrased for clarity or brevity purposes. EPOC's specific concerns/comments are addressed below:

1. LICENSE REINSTATEMENTS

Comment:

EPOC proposes revising the requirements for reinstatement of expired licenses under new Section 22a-133v-4(e) to require payment of an extra fee, but not require taking of additional continuing education credits. Since a licensee's technical competence is not diminished because of a failure to timely renew a license, EPOC feels the payment of an extra fee is a more appropriate way to discourage licensees from missing the deadline. EPOC would also like to propose an extension provision that allows licensees to obtain extra time to complete the minimum number of continuing education credits, if the licensee has not earned the minimum number by the June 1 deadline in odd numbered years. Unlike the failure to timely renew a license, the failure to obtain enough credits may indeed implicate technical competence. Therefore, EPOC also proposes that the licensee would be prohibited from using his or her seal until the missing credits have been earned, in addition to payment of an extra fee to discourage licensees from failing to meet the deadline.

Response:

The concepts are generally incorporated into revised language as proposed below:

(NEW) (e) (1) Where an individual with an expired license applies for a new license within six months following license expiration, the Board may recommend to the Commissioner that a new license be granted to such individual without such individual retaking and passing the examination required under section 22a-133v-2(c) of these regulations, provided:

(A) the applicant's license has not expired on more than two occasions; and

(B) the applicant complies with the following:

(i) if the application is being made in an odd calendar year, the applicant shall meet all the continuing education credit requirements from the last biennial period. If such applicant had a deficiency in the continuing education credit requirements for the last biennial period, the applicant shall meet the continuing education credit requirements for the last biennial period prior to applying to the Board for reinstatement. In any event, such credits cannot be used to satisfy the continuing education requirements of the new biennial period.

(ii) the application to renew the license is accompanied by the renewal fee and an additional fee of 1.5 times the fee required by section 22a-133v-4d(2)(B) of the Regulations of Connecticut State Agencies;

(iii) the applicant submits an affidavit on a form prescribed by the Board on which the applicant certifies, under penalties of perjury, that the applicant has not affixed his or her seal, or allowed his or her seal to be affixed, to any document following the expiration date of the license.

(2) during the period when a license has expired and before the commissioner has granted a new license in accordance with the above criteria and procedures, the individual with an expired license shall not be included on the roster of environmental professionals, shall not present themselves as a licensed environmental professional and shall not perform professional services as a licensed environmental professional.

2. USE OF SEAL

Comment:

EPOC requested that Section 22a-133v-5(b) be revised to only allow use of an LEP seal when authorized by statute or regulation as opposed to when required by the Commissioner. EPOC contends that the use of a seal must only be in instances where the LEP authority has been clearly established through validly enacted statute or regulation, and not pursuant to guidance or other requirement of the Commissioner that has not been through the necessary review under the Administrative Procedures Act.

Response:

The proposal was to add to the regulatory requirement the use of the seal “or any other document as required by the Commissioner.” By the very nature of the statutes establishing and governing LEP’s, an LEP acts under the imprimatur of the Commissioner. As such, the Commissioner may authorize an LEP to use their seal as so directed by the Commissioner pursuant to any other law, regulation, order, permit, license or approval.

The following is the proposed change to 22a-133v-5(b)(3):

- A licensee shall not affix [his or her] such licensee’s seal to any document other than a verification, [or] other document pertaining to a verification or any other document as authorized by the Commissioner pursuant to any other law, regulation, order, permit, license or approval. Where documents are bound together, the application of the seal on one sheet or page shall be considered applied to all such sheets.*

For consistency, minor wording change is also proposed to RCSA section 22a-133v-5(b)1 as follows:

- *A licensee’s seal shall only be used by such licensee in connection with verifications, [or] other documents pertaining to verifications or any other document as authorized by the Commissioner pursuant to any other law, regulation, order, permit, license or approval for which such licensee is responsible. A licensee shall only use a seal during the time when such licensee has been issued a currently valid effective license issued by the Commissioner.*

DEFINITIONS

Comment:

EPOC proposes changing the definition of “contingent fee arrangement” in RCSA Section 22a-133v-1(h)

Response:

The comment requests regulatory changes outside of the scope of the public notice and draft regulations as presented to the public. Such comment will be forwarded to the LEP Board for their consideration.

4. CONTINUING EDUCATION REQUIREMENTS

Comment:

EPOC proposes adding a provision that allows a licensee to carry over up to 8 continuing education credits from one biennial period to the next, provided the licensee has properly renewed such license.

Response:

The comment requests regulatory changes outside of the scope of the public notice and draft regulations as presented to the public. Such comment will be forwarded to the LEP Board for their consideration.

VI. Final Wording of the Proposed Regulations

The final revised LEP Board regulation is presented in Appendix C of this document.

VII. Conclusion

Based upon the comments addressed in this Hearing Report, I recommend the proposal be revised as recommended herein and that the recommended final proposal, included as Appendix C to this report, shall be submitted by the Commissioner for approval by the Attorney General and the Legislative Regulations Review Committee of the Connecticut General Assembly.



Robert E. Bell
Hearing Officer

March 6, 2012

Date

Appendices

A. Notice of Intent to Amend the Regulations Concerning the State Board of Examiners of Environmental Professionals and to Hold a Hearing

B. Comments Received In Response to the Notice of Hearing

C. Revised text for the Regulations Concerning the State Board of Examiners of Environmental Professionals